

SHEET 1 PAGE 1

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01 UNITED STATES DISTRICT COURT
02 COMMONWEALTH OF MASSACHUSETTS

03

04 _____)
05 TRANS-SPEC TRUCK SERVICE, INC.)

06 d/b/a/ TRUCK SERVICE,)
07 Plaintiff)

08) Civil Action
09 v.) No. 04-11836-RCL

10 _____)

11 CATERPILLAR INC.,)

12 Defendant)

13 _____)

14 _____)

15

16 DAY TWO OF THE AUDIOVISUAL DEPOSITION of
17 JOSEPH M. HOWARD, JR., a witness called on behalf of the
18 Defendant, taken pursuant to the Massachusetts Rules
19 of Civil Procedure, before Ellen Dubie, a Professional
20 Court Reporter and Notary Public in and for the
21 Commonwealth of Massachusetts, at the Offices of
22 CAMPBELL CAMPBELL EDWARDS & CONROY, P.C.,
23 One Constitution Plaza, Boston, Massachusetts, on
24 Wednesday, SEPTEMBER 28, 2005, commencing at 10:00 a.m.

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01 A P P E A R A N C E S

02 JOHN A. K. GRUNERT, ESQUIRE

03 Campbell Campbell Edwards & Conroy, P.C.

04 One Constitution Plaza

05 Boston, MA 02129

06 (617) 241-3000/FAX (617) 241-5115

07 On Behalf of the Defendant, Caterpillar, Inc.

08

09 NANCY M. REIMER, ESQUIRE

10 Donovan Hatem, LLP

11 World Trade Center East

12 Two Seaport LaneB

13 Boston, MA 02210

14 (617) 406-4521/ FAX (617) 406-4501

15 On Behalf of the Plaintiff,

16 Trans-Spec Truck Service, Inc., d/b/a Truck Service

17

18 ALSO PRESENT:

19 Mr. William Barton, Videographer

20 In-Court Technologies

21

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01 I N D E X

02 WITNESS

EXAMINATION BY

PAGE

03 JOSEPH M. HOWARD, JR.

(Mr. Grunert)

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04

05

06

E X H I B I T S

07 NO.

DESCRIPTION

PAGE

08 9

Supplemental Answers

14

09 10

Automobile Loss Notice

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10 11

Tri State 10/21/04 Invoice

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11 12

Repair Order and Invoice

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12 13

Automobile Loss Notice

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13 14

Automobile Loss Notice

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14 15

Preventive Maintenance Inspection

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15 16

Repair Order and Invoice

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16 17

Repair Order and Invoice

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17 18

Repair Order and Invoice

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18 19

Repair Order and Invoice

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19 20

On-line Claim Report

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20 21

On-line Claim Report

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21 22

Repair Order and Invoice

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22 23

Repair Order and Invoice

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23 24

Repair Order and Invoice

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01

E X H I B I T S

02 NO.

DESCRIPTION

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03 25

Automobile Loss Notice

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04 26

On-line Claim Report

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05 27

Automobile Loss Notice

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06 28

Southworth-Milton Letter

65

07 29

Packet of Repair Orders and

08

Invoices

82

09 30

Service Claim User Worksheet

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(Exhibits retained by counsel.)

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EXHIBIT

tabbles

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01 A. Yes.

02 Q. And as to every one of these failures, the clutch
03 break was replaced, is that your testimony?

04 A. For every clutch that we replace, we replace the
05 clutch brake.

06 Q. And for every one of these failures, the input
07 shaft was replaced; is that correct?

08 A. I would say so.

09 Q. And as to every one of these failures, the input
10 shaft bearing was replaced; correct?

11 A. Yes.

12 Q. And as to every one of them, the motor mounts
13 were replaced; correct?

14 A. That's a good question.

15 Q. So maybe not correct?

16 A. Every motor mount in every truck was replaced.

17 Q. And as to every one of the failures identified in
18 Exhibit 6, it's your testimony that the starter was
19 replaced; correct?

20 A. Yes.

21 Q. So if there are records showing that the starters
22 were not replaced in some instances, then those
23 documents are incorrect?

24 A. The starter -- the first thing that goes when the

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01 Q. So Trans-Spec's repair records are not complete
02 as to what was done on these trucks, is that what
03 you're telling me?

04 A. That's obvious.

05 Q. So these trucks may have sustained damage or had
06 work done on them unrelated to flywheel housing
07 failures, which is not reflected in Trans-Spec's
08 repair records; is that correct?

09 MS. REIMER: Objection as to form.

10 A. That's possible.

11 Q. Is it correct or not?

12 A. I can't guarantee that our records are 100
13 percent accurate on everything, except flywheel
14 housings. If they're not accurate on flywheel
15 housings, then possibly they're not accurate on
16 something else.

17 Q. Now, the supplemental answer to the third
18 interrogatory states a little farther down, quote: In
19 addition, flywheel house failures caused numerous oil
20 leaks on Trans-Spec's property which needed to be
21 cleaned up pursuant to environmental and hazardous
22 material regulations, close quote.

23 Would you go through Exhibit 6, please, and
24 identify for me which flywheel housing failures

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01 flywheel housing loosens is in fact the starter. The
02 starter could be replaced prior to it being delivered
03 to a repair facility so the truck will start. That's
04 the first indicator that the flywheel housing is
05 failing is the starter. The drivers of the truck
06 won't start. The starter only makes a noise, and
07 that's a good diagnosis for possible flywheel housing
08 loosening and breaking.

09 Q. And will it have been Trans-Spec that will have
10 replaced the starter; is that your testimony?

11 A. Not necessarily but possibly.

12 Q. So as to each and every one of these failures, it
13 is your testimony that either among Trans-Spec's
14 records or among the records of the company that did
15 the repair, we will find a record saying the starter
16 was replaced; is that correct?

17 A. We could find records of purchases of starters,
18 of an overabundant amount of starters that a fleet of
19 our size would possibly use.

20 Q. And you are testifying that if Trans-Spec
21 replaced the starter, there would not necessarily be a
22 record of that work being done? Is that what you're
23 saying?

24 A. Of the work being done, maybe not.

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01 identified in Exhibit 6 caused oil leaks on Trans-
02 Spec's properties which needed to be cleaned up?

03 A. They were Sterling C-12 Engines. That's all we
04 had. They park in different places. You have spots
05 on your property and you have to clean them up, and
06 we're the only ones that park in our parking lot.

07 Q. That's not my question. Please identify flywheel
08 housing failure which caused an oil leak which damaged
09 Trans-Spec's property.

10 A. Every C-12 had an oil leak at one time.

11 Q. That's not my question. Please identify each
12 flywheel housing failure which caused an oil leak
13 which damaged Trans-Spec's property.

14 A. Identify a specific vehicle, a specific date, and
15 a specific time; is that what you're asking?

16 Q. Yes.

17 A. I can't. Every truck leaked at one time or
18 another and every truck had to be cleaned up after,
19 whether it was my property or a customer's property.
20 It's every single one of them, not one specific one on
21 a specific day. Every single one of them leaked more
22 than they didn't.

23 Q. Sir, my question is, please go through Exhibit 6
24 and identify for me which of the flywheel housing

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01 failures identified in that document caused oil leaks
02 which damaged Trans-Spec's property, or tell me that
03 you can't do it.

04 A. The first one is -- 6000 leaked.
05 (Witness reviews document.)

06 Q. On what dates, sir?

07 A. It was repaired on 12/16, so it was prior to
08 that.

09 Q. So it is your testimony today that on some date
10 which you cannot identify before December 16, 2003,
11 Truck 6000, as a result of a flywheel housing problem
12 leaked oil which damaged Trans-Spec's property?

13 A. When you replace flywheel housing breaks, it
14 generally damages the input shaft on the transmission,
15 making the transmission leak, and that's specifically
16 flywheel housings. The leaks were caused -- every
17 truck leaked for one reason or another, and flywheel
18 housings leaking -- flywheel housings would cause
19 vibrations, and something would loosen up.

20 Q. Mr. Howard, you've asserted in the complaint in
21 this case and you said in answers to interrogatories
22 that leaks caused by flywheel housings damaged Trans-
23 Spec's property. That is an important factual
24 allegation in this case. I want the details of each

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01 identifying trucks that were out of service. I've got
02 a copy of that for you. Have I accurately
03 characterized what that is?

04 A. Yes.

05 (Witness reviews document.)

06 Q. Why was it that this document was started
07 January 1, 2002, rather than back in January 2000 when
08 the Sterling trucks were first put into service?

09 A. We were trying to find trucks out of service for
10 probable damages with flywheel housings -- flywheel
11 housing failures.

12 Q. Looking at the first page of Exhibit 2, which
13 pertains to the month January 2002.

14 A. Yes.

15 Q. I just want to make sure I'm clear on this.
16 Truck 8900 is not one of the Sterling trucks involved
17 in this case; correct?

18 A. We have so many trucks that's -- I can't identify
19 trucks by numbers.

20 Q. Take a look at Exhibit 6, which I believe does
21 identify the trucks my numbers, and just confirm for
22 me, please, that Truck 8900 isn't one of the ones
23 involved in this case.

24 A. 8900 is not one of the trucks involved in this

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01 leak for each engine caused by flywheel housings. I'm
02 not interested in comments about general leaky
03 engines. So I want that detail because it hasn't been
04 supplied in the answers to interrogatories, and it
05 hasn't been supplied otherwise. I'd like to know the
06 specific dates and specific engines that caused oil
07 leaks as a result of flywheel housing failures that
08 damaged Trans-Spec's property. That's the answer I
09 want.

10 MS. REIMER: Objection as to form.

11 A. Every flywheel that was removed from a truck was
12 covered with oil. Every photograph you have there of
13 the back of an engine block is covered with oil. The
14 only things that have been cleaned are the ones that
15 we did clean for photographs on the flywheel housings.
16 They were steam-cleaned. So you can't show me one
17 picture that you have of an engine block that wasn't
18 covered with oil.

19 Q. Have you completed your answer?

20 A. That's about the best I can do.

21 Q. Sir, at the first day of your Rule 30(b)(6)
22 deposition, you produced to me a document that we
23 marked Exhibit 2 that was a summary that had been
24 prepared of information contained in dispatch records

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01 case.

02 (Witness reviews document.)

03 Q. And Truck 8200 is not one of the trucks involved
04 in this case; correct?

05 A. That's correct.

06 Q. And Truck 7300 is not one of the ones involved in
07 this case; correct?

08 MS. REIMER: I'm sorry, did you say 7300?

09 MR. GRUNERT: Right.

10 A. Yes, I remember that truck. That is correct.

11 Q. It's not involved in this case; right?

12 A. No, it's not.

13 Q. And Truck 7200 is not involved in this case;
14 correct?

15 A. Correct.

16 (Exhibit No. 10 marked for identification.)

17 Q. We talked last time, sir, about accidents that
18 some of your trucks had been involved in. And you
19 were a little fuzzy on the dates of some of them and
20 the truck numbers of some of them. Exhibit 10 appears
21 to be an Automobile Loss Notice relating to a rollover
22 accident occurring on February 27, 2003, that involved
23 Truck No. 8500; correct?

24 A. Yes.

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01 Q. What I want to know is not that it could be one of
02 three reasons. What I want to know, and it is germane to
03 this case, I need to know when the failures occurred and
04 on what trucks?

05 A. You've already proven two out of three of the
06 reasons. You already have all of the warranty items,
07 which I don't think you do, because 8300 you don't. And
08 you have all of the accident reports. I saw them.

09 MR. GRUNERT: I'm going to suspend at this point.
10 I'm suspending the deposition. The principal purpose of
11 this deposition was to learn the specifics of the
12 supposed flywheel failures, and here we are September 28
13 and I still don't have them. So I'm going to suspend the
14 deposition at this time. We will visit about what to do
15 about it later.

16 THE VIDEOGRAPHER: This completes Tape 4. We are
17 off the record.

18 (Whereupon the deposition suspended at 4:27 p.m.)

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